

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

PNC BANK, NATIONAL ASSOCIATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action File No.:
	)	1:14-CV-3368-ELR
KENNETH D. SMITH, WILLIAM R.	)	
DOOLEY, TERRY W. DOOLEY,	)	
ROBERT MCNAUGHTON, CHRIS	)	
DOOLEY, TIMOTHY R. STERRITT, and	)	
NEW SOUTH VISION PROPERTIES,	)	
LLC, a Florida Limited Liability Company,	)	
	)	
Defendants.	)	
	)	

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**DEFENDANTS' MOTION TO DISMISS (PURSUANT TO FEDERAL  
RULE OF CIVIL PROCEDURE 12(b)(6)), OR IN THE ALTERNATIVE,  
MOTION TO CERTIFY**

COME NOW Defendants Kenneth D. Smith, William R. Dooley, Terry W. Dooley, Robert McNaughton, Chris Dooley, Timothy R. Sterritt, and New South Vision Properties, LLC, (collectively, “Defendants” or “Guarantors”), by and through their undersigned counsel, hereby moves pursuant to Federal Rule of Civil Procedure 12(b)(6), to dismiss Plaintiff’s Complaint, or in the alternative, to certify

questions to the Georgia Supreme Court as set forth in Defendants' Memorandum of Law in Support of this Motion, which is being filed concurrently herewith.

Dated: January 9, 2015.

Respectfully submitted,

**Andersen Tate & Carr, P.C.**

/s/ R. Matthew Reeves

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Attorneys for Defendants Kenneth D. Smith,  
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Properties, LLC

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**LR 7.1 D CERTIFICATION**

This is to certify that the within and foregoing has been prepared with one of the font and point selections approved by the Court in LR 5.1C: Times New Roman 14 point.

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v.	)	
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KENNETH D. SMITH, WILLIAM R.	)	
DOOLEY, TERRY W. DOOLEY, ROBERT	)	
MCNAUGHTON, CHRIS DOOLEY,	)	
TIMOTHY R. STERRITT, and NEW	)	
SOUTH VISION PROPERTIES, LLC, a	)	
Florida Limited Liability Company,	)	
	)	
Defendants.	)	
	)	

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day presented the foregoing **Motion to Dismiss** to the Clerk of Court for filing and uploading to the CM/ECF system, which will send notice to the counsel of record listed below:

F. Xavier Balderas  
Carlton Fields Jorden Burt, P.A.  
One Atlantic Center  
1201 West Peachtree Street  
Suite 3000  
Atlanta, Georgia 30509

This 9th day of January, 2015.

ANDERSEN, TATE & CARR, P.C.

/s/ R. Matthew Reeves

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Smith, William R. Dooley, Terry W.  
Dooley, Robert McNaughton, Chris  
Dooley, Timothy R. Sterritt, New  
South Vision Properties, LLC